

Building Material and Dump Truck Drivers, Teamsters Local Union No. 36, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (E. R. Stong Building Materials Co.) and Kenyon L. Ackley.
Case 21-CB-7097

7 July 1983

DECISION AND ORDER

BY MEMBERS JENKINS, ZIMMERMAN, AND
HUNTER

On 19 June 1980 Administrative Law Judge James T. Rasbury issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order. Thus, we specifically adopt the Administrative Law Judge's finding that Respondent violated Section 8(b)(1)(A) of the Act by imposing a court-collectible fine on employee Kenyon L. Ackley for crossing Respondent's picket line after he had duly resigned from Respondent.

The facts are not substantially in dispute. Employee Kenyon L. Ackley was hired by E. R. Stong Building Materials Co., hereinafter called Stong, as a truckdriver in January 1977. Pursuant to the union-security clause in the collective-bargaining contract between Respondent, also referred to herein as the Union, and Stong, Ackley was required to join the Union within 30 days of initial employment. Thereafter, Ackley became a member of the Union, taking an oath to abide by the Union's constitution and bylaws and promising not to harm fellow union members. With respect to resigning from the Union, Respondent's International constitution provides as follows:

No member may resign from his membership in the International Union or any subordinate body before he has paid all dues, assessments, fines and other obligations owing to the International Union and all its subordinate bodies. A resignation must be in writing to the Secretary-Treasurer of the Local Union. After the Secretary-Treasurer has determined that the foregoing requirements have been complied with, such resignation shall then be effective

thirty (30) days after its receipt by the Secretary-Treasurer.

Prior to the expiration of the collective-bargaining contract on 31 July or 1 August 1979¹ the Union and Stong truckdrivers, including Ackley, held a meeting resulting in an agreement among the truckdrivers to strike unless a new agreement was reached. On 1 October Respondent's president and business agent, Hugh McDonald, and business agent Edward Galvas established an authorized picket line at Stong's facilities. Ackley and the other truckdrivers did not cross the picket line. Ackley testified that on 2 October he contacted the NLRB San Diego Resident Office and was told that he could resign from the Union by "typing up a letter and giving it to the guys at the picket line." On 3 October Ackley approached the picket line and attempted to tender his letter of resignation to McDonald. After Ackley recited the contents of his letter, McDonald refused to accept it, informing Ackley that he would have to deliver the letter to Respondent's union hall, and that his resignation would become effective in 30 days, provided that his dues and other assessments were paid up. McDonald testified that he specifically referred to Respondent's constitution when explaining the procedure to follow in order to resign from the Union. Ackley did not cross the picket line, but, doubting the truth of McDonald's statements, contacted the NLRB San Diego Resident Office. According to Ackley, a NLRB employee at the Resident Office stated that he knew nothing of a 30-day restriction on resignations. On 4 October without attempting to comply with the instructions given to him by McDonald, Ackley crossed the picket line and returned to work. On or about 16 October Ackley received a letter from the Union, together with a grievance filed by a fellow employee, and a copy of the International's constitution. Ackley testified that up until that time he had not seen a copy of the International's constitution. The letter directed Ackley to appear before Respondent's executive board on 1 November in order to answer charges that he had crossed the Union's picket line. During the executive board hearing, Ackley stated that he had been given advice (by the NLRB) as to how to resign and that he was not sure he could believe McDonald's contrary instructions. On or about 28 November Respondent notified Ackley that he had been found guilty of crossing Respondent's picket line and fined \$750, of which \$400 had been suspended on the condition that he not repeat the violation.

¹ All dates herein refer to the year 1979, unless otherwise indicated.

In finding that Respondent violated Section 8(b)(1)(A) of the Act, the Administrative Law Judge reasoned that the record failed to establish that Ackley had knowledge of, or consented to, the constitutional limitations placed on his right to resign from the Union. In the alternative, the Administrative Law Judge resolved that, even if Ackley either knew of or had consented to the constitutional limitations placed on his right to resign, the limitations amounted to an unreasonable restriction on an employee's Section 7 right to resign his union membership. *NLRB v. Textile Workers*, 409 U.S. 213 (1972).² Thus, Ackley was free to resign at will by clearly conveying his intent to resign to Respondent. The Administrative Law Judge further found that because Ackley's 3 October letter of resignation and recitation of its contents to McDonald constituted a clear conveyance of his intent to resign to the Union, Ackley's 3 October resignation was valid. *Auto Workers (Ex-Cell-O Corp.)*, 227 NLRB 1045 (1977), and *Teamsters Local 439 (Loomis Courier Service)*, 237 NLRB 220 (1978).

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Building Material and Dump Truck Drivers, Teamsters Local Union No. 36, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, its officers, agents, and representatives, shall take the action set forth in said recommended Order.

MEMBER JENKINS, dissenting:

For the reasons set forth in my separate dissenting opinions in *Machinists Local 1327 (Dalmo Victor)*, 263 NLRB 984 (1982), and 231 NLRB 719 (1977), I find that, contrary to Member Hunter, the

² Member Zimmerman does not rely on the Administrative Law Judge's alternative finding that the Union's rule regarding resignation was invalid. Rather, in finding the violation alleged, he relies solely on the finding that Ackley had insufficient notice of the constitutional limitations on resignation from membership in Respondent. The record reveals that Ackley received no notification of any restrictions on resignations until he actually attempted to resign at the picket line on 3 October. At that point, he had no ability to comply with the resignation procedures, except by waiting out a 30-day period of which he previously had no knowledge.

Member Hunter concurs in the finding of a violation herein. In so doing, he finds it unnecessary to reach the Administrative Law Judge's finding that Ackley had insufficient notice of the constitutional limitations on resignation from Respondent. Consistent with his concurring opinion in *Machinists Local 1327 (Dalmo Victor)*, 263 NLRB 984 (1982), Member Hunter finds that any restriction on a union member's right to resign is unreasonable. Accordingly, Respondent violated Sec. 8(b)(1)(A) by fining Ackley for crossing the picket line without having resigned from Respondent in the manner required by its constitutional procedures.

Union's constitutional provision with respect to resignations, as applied herein, is a reasonable and limited restriction on the employees' right to resign their union membership, and is within the scope of the Union's control over its internal affairs. And, on the facts here, I find that Ackley was given adequate notice of the constitutional provision. Accordingly, I conclude that the fine imposed pursuant to the constitutional provision on employee Ackley for crossing the Union's picket line was lawful and not violative of Section 8(b)(1)(A) of the Act.

DECISION

STATEMENT OF THE CASE

JAMES T. RASBURY, Administrative Law Judge: This case was heard by me on January 7, 1980, in San Diego, California, based on a charge filed by Kenyon L. Ackley, an individual, herein called Ackley, on October 31, 1979.¹ A complaint which issued on November 21 alleges that Building Material and Dump Truck Drivers, Teamsters Local No. 36, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called Respondent, violated Section 8(b)(1)(A) of the National Labor Relations Act, herein referred to as the Act, when it brought Ackley before a union tribunal to face charges of working behind Respondent's picket line despite the fact that Ackley had effectively resigned from Respondent prior to crossing the picket line.

Respondent's timely answer denies that Ackley had effectively resigned membership in Respondent, and generally denies the commission of any unfair labor practices.

Upon the entire record in this case, and from my observations of the witnesses, and after due consideration of the briefs filed by counsel for the General Counsel and Respondent, I hereby make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

E. R. Stong Building Materials Co., herein called Stong, is now, and has been at all times material herein, a corporation duly organized under and existing by virtue of the laws of the State of California, with an office and principal place of business located in Lemon Grove, California, where it is engaged in the retail sale of building materials. In the course and conduct of its business operations, Stong annually derives gross revenues in excess of \$500,000 and annually purchases and receives goods and products valued in excess of \$10,000 directly from suppliers located outside the State of California. On the basis of these admitted facts, I herewith find Stong to be an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

¹ All dates hereinafter will refer to the year 1979 unless otherwise indicated.

II. THE LABOR ORGANIZATION

Respondent is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Background and Facts

Ackley was hired by Stong as a truckdriver in January 1977. As a condition of employment, Ackley was required to join Respondent within 30 days of initial employment. In seeking compliance therewith, Ackley participated in the formal swearing-in ceremony, taking an oath to abide by the constitution and bylaws and promising not to harm a fellow union member.² No literature was handed out at the swearing-in ceremony, nor were restrictions on resignation discussed.³ Ackley testified that, although his membership card was later sent to him by mail, he never received a copy of the International's constitution and bylaws.

With the collective-bargaining agreement between Stong and Respondent due to expire on July 31 or August 1, Respondent and Stong truckdrivers, Ackley included, held a meeting at Respondent's offices in the latter part of July. The meeting resulted in the affected members agreeing to strike unless an agreement was reached between Stong and Respondent.

The expiration of the collective-bargaining agreement was followed by the establishment of an authorized picket line at Stong's facilities on October 1. Ackley testified that, when he arrived for work on October 1, he noticed Respondent's business agents, McDonald and Galvas, carrying signs, which indicated a strike was in progress.⁴ Ackley and his fellow employees did not cross the picket line.

Ackley testified that, on October 2, he conferred with a representative of the San Diego Resident Office of the Board who informed Ackley that he could resign from Respondent by submitting a typed letter to "the guys at the picket line." Ackley proceeded to have his wife type letters of resignation for himself and fellow employees Luis Vasquez and Federi Ortega.

On October 3, shortly before 6 a.m., Ackley approached the picket line and attempted to present his letter of resignation⁵ to Respondent's business agent,

McDonald. After Ackley read the resignation letter to McDonald, McDonald refused to accept it, telling Ackley that he would have to give the letter to the secretary-treasurer at Respondent's union hall, and that it would become effective in 30 days, provided all his dues and fines were paid up.⁶

Ackley again contacted the Resident Office and was informed that the Resident Office knew nothing about the 30-day restriction.⁷

Without attempting to submit his resignation letter to an official at Respondent's union hall, Ackley crossed the picket line and returned to work on October 4.

On or about October 16, Ackley received a letter from Respondent, together with a grievance filed by fellow employee Jim Devine, and a copy of the International's constitution. The letter notified Ackley to appear before an executive board hearing on November 1 to answer charges that he crossed Respondent's picket line. Ackley testified that he had never seen a copy of the International's constitution until he received a copy with the letter on or about October 16.

The executive board meeting was held as scheduled. On or about November 28, Ackley was notified by mail that he had been found guilty of crossing Respondent's picket line and fined \$750, of which \$400 had been suspended on the condition that he not repeat the violations.

B. Conclusions

It is well settled that Section 7 of the Act guarantees to employees the right to resign from a labor organization. *Marlin Rockwell Corp.*, 114 NLRB 553, 561-562 (1965). Section 8(b)(1)(A) protects this right by making it an unfair labor practice for a labor organization "to restrain or coerce . . . employees in the exercise of the rights guaranteed by Section 7"

The power of a union to fine an employee for crossing an authorized picket line and, therefore, escape the prohibition of Section 8(b)(1)(A) is dependent on whether the employee has lawfully resigned his union membership. Union actions in the form of fining a full member for crossing a picket line are excepted from Section 8(b)(1)(A), as constituting part of the union's internal affairs. *NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175, 195 (1967). In contrast, the Supreme Court has remarked:

Where a member lawfully resigns from a union and thereafter engages in conduct which the union rule proscribes, the union commits an unfair labor practice when it seeks enforcement of fines for that conduct. That is to say, when there is a lawful dissolution of a union-member relation, the union has

² On cross-examination, Ackley testified that he could not remember whether or not the prohibition against crossing a picket line was mentioned as an example of not harming a fellow union member.

³ Respondent's president and business agent, Hugh McDonald, testified that he generally conducts initiation classes for new members, at which time standard packets of information, including union bylaws, blanket life insurance policies, copies of Respondent's dues structure, workers' compensation rules, and general information about Respondent, are provided inductees. Since Ackley testified that he never received any material from Respondent at the initiation ceremonies and McDonald did not remember inducting Ackley into Respondent, I credit Ackley in regard to not receiving any material at the swearing-in ceremony.

⁴ The presence of McDonald and Galvas was stipulated to by the parties hereto.

⁵ Ackley's letter of resignation reads as follows:

I, Kenyon L. Ackley, S.S. #105-46-0142, submit my resignation to the Teamsters Union Local #36. I feel it is in my best interest to terminate my membership at this time.

⁶ Ackley testified that McDonald could have referred to the official at Respondent's union hall as the secretary-treasurer, but replied in the negative when asked whether or not McDonald referred to the secretary-treasurer by name.

⁷ McDonald testified that he made specific reference to the International's constitution in telling Ackley the procedure to follow for effective resignation. Ackley did not dispute this contention, but rather testified as to doubts concerning the truth of McDonald's statements on the picket line, which resulted in him seeking additional advice from the Resident Office.

no more control over the former member than it has over the man in the street. [*NLRB v. Textile Workers*, 409 U.S. 213, 217 (1972).]

In the instant case, the issue to be resolved is whether Ackley's tender of resignation to Respondent's business agent on October 3 was sufficient so as to constitute a valid resignation from Respondent. Ackley contends that he effectively resigned his union membership before returning to work on October 4 and, therefore, Respondent's fining of Ackley for his postresignation conduct is in violation of Section 8(b)(1)(A). Respondent asserts that Ackley's resignation was not effective because he had failed to follow the International's constitutional procedures for resigning.

Article II, section 2(h), of the International's constitution reads as follows:

(h) No member may resign from his membership in the International Union or any subordinate body before he has paid all dues, assessments, fines and other obligations owing to the International Union and all its subordinate bodies. A resignation must be in writing to the Secretary-Treasurer of the Local Union. After the Secretary-Treasurer has determined that the foregoing requirements have been complied with, such resignation shall then be effective thirty (30) days after its receipt by the Secretary-Treasurer.

It is Respondent's contention that, had Ackley tendered his letter of resignation to its secretary-treasurer, Ackley's resignation would have become effective in 30 days, provided all his dues, assessments, and fines had been paid up. I find it difficult to understand how a union can reasonably expect its members to abide by various constitutional procedures without first informing the members of those procedures. Ackley's undisputed testimony indicates that, prior to his tender of resignation on October 3, Respondent never informed him of any limitations on his right to resign. The record clearly indicates that Ackley had never seen a copy of the International's constitution before receiving a copy on or about October 16, nearly two weeks subsequent to his tender of resignation.⁸

It is now well established that where "there is no evidence that the employees . . . either knew of or had consented to any limitation on their right to resign" union members are free to resign at will and Section 7 of the Act protects their right to return to work during a strike which had commenced while they were union members.

See *Auto Workers Local 1384 (Ex-Cell-O Corp.)*, 227 NLRB 1045, 1048 (1977), 412 U.S. at 87-88 (1973), and *Textile Workers, supra*, 409 U.S. at 217-218 (1972).

In light of the fact that Ackley had no knowledge of restrictions on his right to resign, it would be "unrealistic" to say he consented to constitutional limitations on

that statutory right. *Teamsters Local 439 IBEW (Loomis Courier Service)*, 237 NLRB 220 (1978).

As a requisite for enforcing a union-security clause against its employees, the union is under a fiduciary duty to "deal fairly" with its employees. The Third Circuit has interpreted this duty as requiring the union to "inform the employee of his obligations in order that the employee may take whatever action is necessary to protect his job tenure." *NLRB v. Hotel Employees, Local 568 (Philadelphia Sheraton)*, 320 F.2d 254, 258 (3d Cir. 1963). As a reasonable extension of this duty to "deal fairly," the Board now requires the union to inform the employee of the constitutional limitations placed upon his right to resign his union membership. *Loomis Courier Service, supra*, 237 NLRB at 223. The failure of a union to inform the employee of both his contractual obligations under the union-security agreement and limitations placed upon his statutory right to resign subject the affected employee to the likelihood of suffering "serious harm." *Id.* at 223. In the instant case, Ackley suffered "serious harm," in the form of a \$750 fine, because the Union failed to exercise its duty to "deal fairly" by not making Ackley aware of the constitutional limitations on resignation.

It would seem to logically follow that a union member, desiring to resign his membership, absent knowledge of the proper party to accept his resignation, would reasonably believe that the Local's president possessed the authority to accept resignations. As Respondent's president, McDonald conducted the initiation classes and swearing-in ceremonies, and presided over the negotiation meetings between Stong employees and Respondent. Since Ackley participated in these events, he had an opportunity to see McDonald exercise union authority and, therefore, reasonably form a belief that McDonald could accept his resignation. Ackley's contact with the Resident Office suggests that he did make a good-faith effort to discover the proper resignation procedures. Furthermore, when a union member makes out a letter of resignation which clearly states his unequivocal intent to resign union membership, his suspicion will undoubtedly arise when, in tendering his resignation, he is informed for the first time of constitutional limitations on his right to resign. The likelihood of developing this suspicion is even greater when it comes at a time in which the union is involved in an economic strike and all parties concerned realize that union solidarity can prove to be a most effective weapon. In the instant case, Ackley testified that he had doubts as to whether McDonald was accurately informing him of the 30-day constitutional restriction on resignation.

Respondent contends that the information McDonald gave Ackley on October 3 constituted sufficient notice of the constitutional limitations on resignation. Based on the similar factual setting in *Loomis Courier Service, supra*, I must take exception to Respondent's contention. *Loomis* involved the application of the same provision of the Teamsters International constitution which is presently at issue. In that case, an employee desiring to resign his union membership was never informed of, nor consented to, any restrictions on his statutory right to resign. The employee delivered his letter of resignation to the union

⁸ Although Respondent's president, McDonald, testified that packets of information are given to new members at the initiation class, he conceded that the International's constitution is not included in the packet.

hall and crossed the picket line the following day. Subsequent to his crossing, the employee received a letter from the union, informing him that his resignation was ineffective because he had failed to follow the International's constitutional procedures. The Board adopted the Administrative Law Judge's conclusion that the union had failed to give the employee timely notice of restrictions on resignation and, therefore, the employee was free to resign at will, provided his intent to resign was phrased in clear and unequivocal terms. *Loomis Courier Service, supra*, 237 NLRB at 223.

Likewise, when Ackley approached the picket line to tender his letter of resignation Respondent had yet to bring to his attention any restrictions on resignation. The delivery of the employee's resignation letter in *Lomis* is analogous to Ackley's tender of resignation in the instant case. The occurrence of this event constituted the time in which the subsequent giving of notice must be regarded as untimely and, therefore, ineffective as a bar to an otherwise valid resignation. Just as the union's letter to the employee in *Loomis* was considered untimely, so too must McDonald's oral declaration to Ackley constitute untimely notice.

I find that, since the record fails to establish that Ackley had knowledge of, or consented to, the constitutional limitations placed upon his statutory right to resign from Respondent, he was free to resign at will by clearly conveying his unequivocal intent to Respondent. See *Auto Workers Local 1384 (Ex-Cell-O Corp.)*, 227 NLRB 1045, 1049 (1977); *Loomis Courier Service, supra* at 223. Furthermore, I find that, because Ackley's letter of resignation and his recitation of its content to McDonald constitute a clear conveyance of his unequivocal intent to resign from Respondent, Ackley's tender of resignation on October 3 is valid.

Assuming Ackley either knew of or had consented to Respondent's constitutional limitations placed upon his right to resign, the final issue which must be addressed is whether this constitutional restriction falls within the proviso to Section 8(b)(1)(A), as constituting the exercise of "the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein." Resolution of this issue necessitates an inquiry into "the legitimacy of the union interest vindicated by the rule and the extent to which any policy of the Act may be violated." *Auto Workers Local 1384 (Ex-Cell-O Corp.)*, 227 NLRB 1045, 1050 (1977), citing *Scofield v. NLRB*, 394 U.S. 423, 431 (1969). The Board has yet to pass judgment on whether the Teamsters constitutional provision, which requires its members to wait 30 days before their resignations are effective, is a reasonable restriction on an employee's Section 7 right to resign.⁹ Although the Board found it unnecessary to reach this issue in *Loomis Courier Service, supra*, 237 NLRB at 220, fn. 1,¹⁰ I believe Administrative Law

Judge Jerrold H. Shapiro's analysis as to the validity of the International's resignation provision is readily applicable to the instant case.

Here, as in *Loomis*, Respondent has failed to present evidence showing that the 30-day restriction vindicates a legitimate union interest. Rather, Respondent sets forth in its post-hearing brief what it considers to be justifications for the 30-day restriction. Respondent contends that the 30-day waiting period "serves to provide the Union with a reasonable period in which to determine whether the member has fulfilled his financial obligations." While requiring a member to satisfy his financial obligations before his resignation is accepted is reasonable and vindicates a legitimate union interest without doing violence to the Act, Respondent has failed to produce evidence justifying why it needs 30 days to verify that a member has fulfilled his financial obligations.

Since the 30-day waiting period for resignations corresponds to the 30-day grace period of initial employment in which the employee has to join the union, Respondent asserts that "it is no more burdensome for the employee to get out [of the union] than it was for him to get in." Contrary to this contention, during a strike the resigning employee is confronted with a significantly greater burden than he faced in joining the union. As the Court explained in *NLRB v. Textile Workers, supra*, 409 U.S. at 217-218:

Events occurring after the calling of a strike may have unsettling effects, leading a member who voted to strike to change his mind. The likely duration of the strike may increase the specter of hardship to his family. [Emphasis supplied.]

With a strike in progress, the employee who has yet to join the union is free to cross the picket line at will. Since he is not bound by a union-member contract, the employee is not subject to a union fine for crossing the picket line and returning to work. By contrast, the resigning member is confronted with a 30-day waiting period in which he may not cross the picket line without being threatened with a union fine. The resigning employee finds himself in a more burdensome circumstance since he is unable to receive on-the-job pay and, therefore, subjects his family to the hardship referred to by the *Textile Workers* Court.

Furthermore, Respondent contends that the 30-day waiting period is reasonable since:

Union officials who must evaluate the strength of their position and plan the union's strategy in both bargaining and concerted activity need some reasonable notice of an imminent loss of strength and support.

While a union has a legitimate interest in receiving some reasonable notice of membership loss, Respondent has failed to produce evidence justifying why it needs a full 30 days to evaluate its strength and strategy. Whenever a labor organization attempts to restrict the employees' statutory right to resign, the true purpose behind the restriction must be considered so that a determination can

⁹ The right to resign from a labor organization is guaranteed by Sec. 7 of the Act. *Marlin Rockwell Corp.*, 114 NLRB 553, 561-562 (1955).

¹⁰ The Board found it unnecessary to pass upon the validity of the 30-day restriction since no exception was taken to the Administrative Law Judge's primary finding of an 8(b)(1)(A) violation.

be made as to whether the restriction vindicates a legitimate union interest. Since Respondent has failed to produce any evidence justifying why 30 days is needed for a resignation to become effective, I am inclined to adopt as the true purpose of the restriction, the reason expressed by Administrative Law Judge Shapiro in *Loomis Courier Service*, *supra*, 237 NLRB at 224:

[A]bsent convincing evidence to the contrary, it is a fair inference that the purpose behind the aforesaid 30-day waiting period is to provide the Respondent with an opportunity to pressure its members to change their mind about resigning and to continue to support the Union. . . . I am convinced that the requirement that a union member wait 30 days before his or her resignation becomes effective impinges upon an employee's statutory right to resign from the Union and is broader than necessary to serve the Union's interest [and, therefore] . . . is an unreasonable restriction upon a member's right to resign.

To allow Respondent to restrict an employee's statutory right to resign for 30 days, without justification for that time period, promotes a violation of the policy that an employee's "Section 7 rights are not lost by a union's plea for solidarity or by its pressure for conformity and submission to its regime." *NLRB v. Textile Workers*, *supra*, 409 U.S. at 217-218. I, therefore, must find that Respondent's 30-day waiting period is an unreasonable restriction upon an employee's Section 7 right to resign his union membership.

IV. THE REMEDY

Having found that Respondent has engaged in, and is engaging in, certain unfair labor practices, I shall recommend that it cease and desist therefrom. In order to effectuate the purposes of the Act, I shall also recommend that Respondent rescind Ackley's unlawful fine, and refund to him any money paid to it as a result of that fine, with interest to be calculated according to the "adjusted prime rate."¹¹

CONCLUSIONS OF LAW

1. E. R. Stong is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Respondent is a labor organization within the meaning of Section 2(5) of the Act.

3. By imposing a court-collectible fine on Kenyon L. Ackley, who had duly resigned from Respondent, for his postresignation crossing of a sanctioned picket line and for working during a strike at E. R. Stong, Respondent restrained and coerced an employee in the exercise of the right guaranteed him in Section 7 of the Act, and thereby engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) of the Act.

¹¹ See *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962), and *Florida Steel Corp.*, 231 NLRB 651 (1977).

Upon the basis of the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER¹²

The Respondent, Building Material and Dump Truck Drivers, Teamsters Local Union No. 36, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Imposing or threatening to impose fines upon employees who have resigned from and are no longer members of Respondent because of postresignation conduct protected by Section 7 of the Act.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the purposes of the Act:

(a) Rescind the fine levied against Kenyon L. Ackley because of his postresignation work for E. R. Stong Building Materials Co., during the strike which began in October 1979, and refund to him any money he may have paid as a result of such fine, plus interest.

(b) Post at its business office and meeting halls copies of the attached notice marked "Appendix."¹³ Copies of said notice, on forms provided by the Regional Director for Region 21, after being duly signed by an authorized representative of Respondent, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(c) Mail to the Regional Director for Region 21 signed copies of said notice for posting by E. R. Stong Building Materials Co., if the Company is willing, in places where notices to employees are customarily posted. Copies of said notice to be furnished by the Regional Director, after being duly signed by Respondent's authorized representative, shall be returned forthwith to the Regional Director.

(d) Notify the Regional Director for Region 21, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

¹² In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

¹³ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT fine nor threaten to fine you for crossing a picket line to work after you have lawfully resigned from membership.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of your rights guaranteed by Section 7 of the National Labor Relations Act.

WE WILL rescind the fine levied against Kenyon L. Ackley because he worked at E. R. Stong Building Materials Co., after his lawful resignation from membership during the strike and refund any money he may have paid as a result of such fine, plus interest.

BUILDING MATERIAL AND DUMP TRUCK
DRIVERS, TEAMSTERS LOCAL UNION No.
36, INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSE-
MEN AND HELPERS OF AMERICA